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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,979	02/02/2007	Jacobus Johannes Van Dijk	72998-014400	5830

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GREENBERG TRAURIG LLP (LA)  
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INTELLECTUAL PROPERTY DEPARTMENT  
SANTA MONICA, CA 90404

EXAMINER
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PAINTER, BRANON C

ART UNIT	PAPER NUMBER
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3633

MAIL DATE	DELIVERY MODE
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04/13/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/576,979	<b>Applicant(s)</b> VAN DIJK, JACOBUS JOHANNES	
	<b>Examiner</b> BRANON C. PAINTER	<b>Art Unit</b> 3633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 12 is objected to because of the following informalities:
  - a. Claim 12, "rooves." For the purpose of this examination, the examiner presumes this should read "roofs."
  - b. Appropriate correction is required for all preceding objections.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

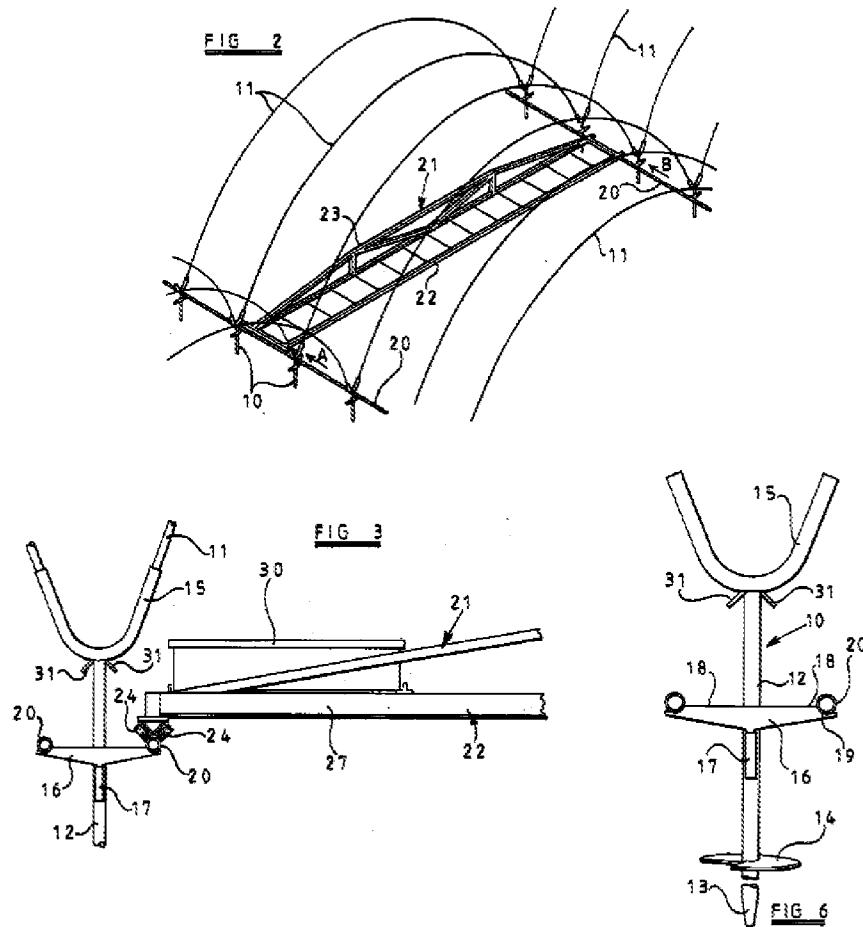
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claims 1-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davison (GB 2,341,833) in view of Brown, Jr. (6,098,335).
5. Regarding claim 1:
  - a. Davison discloses a gantry system including:

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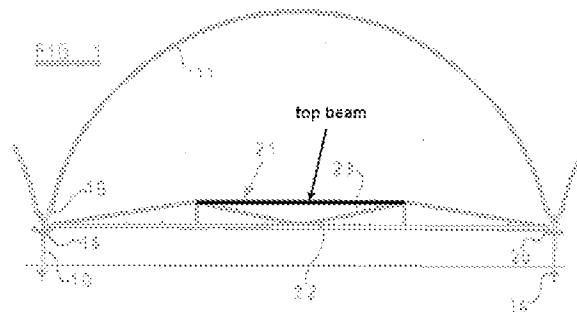
- i. A greenhouse construction (Fig. 2) comprising columns (10) and horizontal support members (21) spaced from the floor.
  - ii. A rail system (20) fixed to the horizontal support members (20 fixed to 21 via 24, Fig. 3) and imparting strength thereto.
  - iii. The rail system extending continuously over a distance of at least three successive columns (Fig. 2).
  - iv. The support members comprising longitudinal beams (21) comprising at least two longitudinal sections located some distance apart (22 and “top beam,” amended Fig. 1) and connected by link sections (23, Fig. 1).
  - v. The greenhouse having a roof construction bearing on said columns (11).
- b. Davison does not appear to expressly disclose vertical boundary walls.
- c. Brown discloses that it is well-known to provide such greenhouse structures with vertical boundary walls (82, Fig. 1).
- d. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the greenhouse construction of Davison by adding vertical boundary walls as taught by Brown, in order to protect the plants inside from the elements and allow the moisture intake of such plants to be controlled.

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- e. The examiner notes the phrase “for moving...said area” is considered a recitation of intended use. As such, it is given little patentable weight. That said, the system disclosed by Davison could be used in such a way.



Reproduced from Davison



Reproduced from Davison (amended)

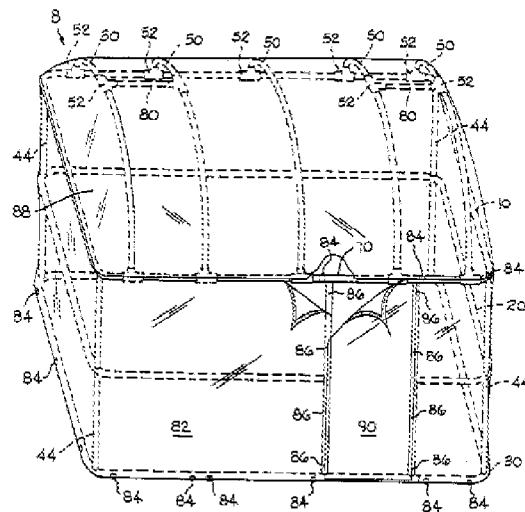
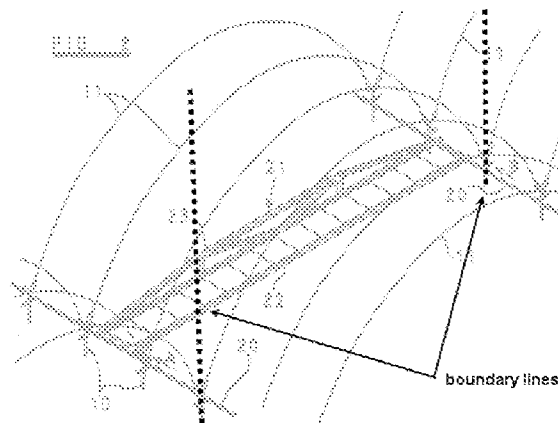


FIG. 1

Reproduced from Brown

6. Regarding claim 2, Davison/Brown as modified above discloses a greenhouse construction, with Davison further disclosing each roof bordering the subsequent roof along a boundary line that is perpendicular to the longitudinal beams and the rail system (amended Fig. 2).



Reproduced from Davison (amended)

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7. Regarding claim 3, Davison/Brown as modified above discloses a greenhouse construction, with Davison further disclosing a moveable carriage located on the rail system (containers that ride on the gantry, p. 4, 16-17).
8. Regarding claim 4, Davison/Brown as modified above discloses a greenhouse construction, with Davison further disclosing one rail of the rail system (20) fixed to one of the longitudinal sections (fixed to 22 via 24).
9. Regarding claim 5, Davison/Brown as modified above discloses a greenhouse construction, with Davison further disclosing means at the end of the rail system for moving a carriage in a direction perpendicular thereto (24, Fig. 3).
10. Regarding claim 8, Davison/Brown as modified above discloses a greenhouse construction, with Davison further disclosing a rail system with a power supply (p. 9, 4-7).
11. Regarding claim 9:
  - a. Davison/Brown as modified above discloses a greenhouse construction as set forth above, with Davison further disclosing a carriage with gripping/lifting means (the containers of Davison necessarily have walls, which can be used to grip and lift the carriage).
12. Regarding claim 1:
  - a. Davison discloses a gantry system including:
    - i. A greenhouse construction (Fig. 2) comprising columns (10) and horizontal support members (16) spaced from the floor.

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- ii. A rail system (20) fixed to the horizontal support members (16, Fig. 6).
  - iii. The rail system extending continuously over a distance of at least three successive columns (Fig. 2).
  - iv. The support members comprising longitudinal beams (16) comprising at least two longitudinal sections located some distance apart (16 at opposite sides of structure, Fig. 1) and connected by link sections (22).
  - v. The greenhouse having a roof construction bearing on said columns (11).
- b. Davison does not appear to expressly disclose vertical boundary walls.
  - c. Brown discloses that it is well-known to provide such greenhouse structures with vertical boundary walls (82, Fig. 1).
  - d. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the greenhouse construction of Davison by adding vertical boundary walls as taught by Brown, in order to protect the plants inside from the elements and allow the moisture intake of such plants to be controlled.
  - e. The examiner notes the phrase “for moving...said area” is considered a recitation of intended use. As such, it is given little patentable weight. That said, the system disclosed by Davison could be used in such a way.
13. Regarding claim 6, Davison/Brown as modified above discloses a greenhouse construction, with Davison further disclosing horizontal support members



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comprising a ridge section (19) with a rail system (20) on which a construction that can be moved along it (27) is mounted.

14. Regarding claim 7, Davison/Brown as modified above discloses a greenhouse construction, with Davison further disclosing horizontal support members comprising a guttering section (19) with rail system (20) along which a construction fixed thereto (27) can be moved.
15. Regarding claim 10, Davison/Brown as modified above discloses a greenhouse construction, with Davison further disclosing link sections that join the parallel longitudinal sections in sawtooth fashion ("V" or sawtooth member at opposite ends of 22 connecting it to 16).
16. Regarding claim 12, Davison/Brown as modified above discloses a greenhouse construction, with Davison further disclosing a construction including two roofs (Fig. 2) with the rail system extending perpendicular to a boundary between the roofs (amended Fig. 2).

17. Regarding claim 11:

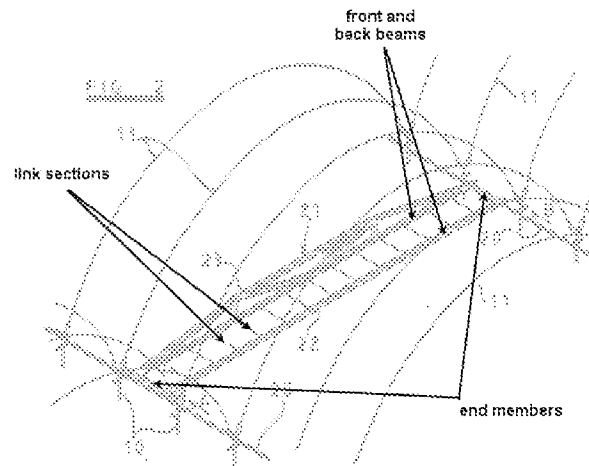
- a. Davison discloses a gantry system including:
  - i. A greenhouse construction (Fig. 2) comprising columns (10) and horizontal support members (21) spaced from the floor.
  - ii. A rail system (20) fixed to the horizontal support members and imparting strength thereto.

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- iii. The rail system extending continuously over a distance of at least three successive columns (Fig. 2).
  - iv. The support members comprising longitudinal beams (22) comprising at least two parallel longitudinal sections (front and back 22, Fig. 2).
  - v. A longitudinal section passing through at least two successive columns ("end members", amended Fig. 2.1).
  - vi. Link sections ("link sections", amended Fig. 2.1) joining together the longitudinal sections.
- b. Davison does not appear to expressly disclose vertical boundary walls.
  - c. Brown discloses that it is well-known to provide such greenhouse structures with vertical boundary walls (82, Fig. 1).
  - d. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the greenhouse construction of Davison by adding vertical boundary walls as taught by Brown, in order to protect the plants inside from the elements and allow the moisture intake of such plants to be controlled.
  - e. The examiner notes the phrase "for moving...thereon" is considered a recitation of intended use. As such, it is given little patentable weight. That said, the system disclosed by Davison could be used in such a way.
  - f. Davison/Brown does not expressly disclose that the longitudinal section passes through at least three successive columns (rather, it teaches a section passing through two successive columns).

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- g. The examiner further notes that it would have been an obvious matter of design choice to modify the end members of Davison by making them long enough to span three successive columns, since applicant has not disclosed that such a length solves any stated problem or is for any particular purpose and it appears that the system of Davison/Brown would perform equally well.
- h. The examiner notes that where the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device is not patentably distinct from the prior art device. *MPEP 2144.04.*



Reproduced from Davison (amended Fig. 2.1)

### ***Response to Arguments***

18. Applicant's arguments filed 01/09/09 have been fully considered but they are not persuasive.

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19. Applicant argues that Davison's rail system does not comprise two longitudinal sections joined by link sections, and that Davison's gantry is different from applicant's rail system. The examiner notes that the gantry reads on applicant's claim, which requires a rail system and separate horizontal support members including longitudinal beams and link sections. Applicant appears to be arguing that his rail is made of two longitudinal sections and link sections, but should be apprised that this is not what is being claimed.
20. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).
21. Applicant argues that the newly added claims overcome the prior art. However, Davison/Brown is interpreted to meet all these added claim limitations as set forth in the rejection above.

### ***Conclusion***

22. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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23. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANON C. PAINTER whose telephone number is (571)270-3110. The examiner can normally be reached on Mon-Fri 7:30AM-5:00PM, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on (571) 272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B. C. P./

Examiner, Art Unit 3633

/Basil Katcheves/

Primary Examiner, Art Unit 3635